

SENATE BILL 1497

By Yager

AN ACT to amend Tennessee Code Annotated, Title 20
and Title 40, Chapter 17, relative to out-of-court
statements by children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 17, Part 1, is amended by
adding the following as a new section:

(a) Notwithstanding any rule or statute to the contrary, an out-of-court statement
made by a child who is under twelve (12) years of age at the time of a trial or hearing
describing any sexual act performed by, with, or on the child or describing any act of
physical violence directed against the child, shall not be excluded as hearsay under the
Tennessee Rules of Evidence if all of the following apply:

(1)

(A) The court finds that the totality of the circumstances
surrounding the making of the statement provides particularized
guarantees of trustworthiness that make the statement at least as reliable
as statements admitted pursuant to the other subsections of Rules 803
and 804 of the Tennessee Rules of Evidence. The circumstances must
establish that the child was particularly likely to be telling the truth when
the statement was made and that the test of cross-examination would add
little to the reliability of the statement. In making its determination of the
reliability of the statement, the court shall consider all of the
circumstances surrounding the making of the statement, including, but not
limited to:

- (i) Spontaneity;
- (ii) The internal consistency of the statement;
- (iii) The mental state of the child;
- (iv) The child's motive or lack of motive to fabricate;
- (v) The child's use of terminology unexpected of a child of similar age;
- (vi) The means by which the statement was elicited; and
- (vii) The lapse of time between the act and the statement;

(B) In making the determination in subdivision (a)(1)(A), the court shall not consider whether there is independent evidence of the sexual act or act of physical violence;

(2) The child's testimony is not reasonably obtainable by the proponent of the statement;

(3) There is independent evidence of the sexual act or act of physical violence; and

(4) At least ten (10) days before the trial or hearing, a proponent of the statement has notified all other parties in writing of the content of the statement, the time and place at which the statement was made, the identity of the witness who is to testify about the statement, and the circumstances surrounding the statement that are claimed to indicate its trustworthiness.

(b) The child's testimony is "not reasonably obtainable by the proponent of the statement" under subdivision (a)(2) only if one (1) or more of the following apply:

(1) The child refuses to testify concerning the subject matter of the statement or claims a lack of memory of the subject matter of the statement after a person trusted by the child, in the presence of the court, urges the child to both describe the acts contained in the statement and to testify;

(2) The court finds all of the following:

(A) The child is absent from the trial or hearing;

(B) The proponent of the statement has been unable to procure the child's attendance or testimony by process or other reasonable means despite a good faith effort to do so; and

(C) It is probable that the proponent would be unable to procure the child's testimony or attendance if the trial or hearing were delayed for a reasonable time; or

(3) The court finds both of the following:

(A) The child is unable to testify at the trial or hearing because of death or then existing physical or mental illness or infirmity; and

(B) The illness or infirmity would not improve sufficiently to permit the child to testify if the trial or hearing were delayed for a reasonable time.

(c) If the child's refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the statement for the purpose of preventing the child from attending or testifying, it has not been established that the child's testimony or attendance is not reasonably obtainable.

(d) The court shall make the findings required by this rule on the basis of a hearing conducted outside the presence of the jury and shall make findings of fact, on the record, as to the basis or bases for its ruling.

SECTION 2. This act shall take effect July 1, 2018, the public welfare requiring it.